

DIVISION OF THE HUMANITIES AND SOCIAL SCIENCES
CALIFORNIA INSTITUTE OF TECHNOLOGY

PASADENA, CALIFORNIA 91125

TALES FROM THE MEDIEVAL COURTROOM:
THE FALL AND RISE OF THOMAS OF ELDERFIELD

Paul R. Hyams
California Institute of Technology
Pembroke College, Oxford



HUMANITIES WORKING PAPER 107

© Paul R. Hyams January 1985

TALES FROM THE MEDIEVAL COURTROOM:
THE FALL AND RISE OF THOMAS OF ELDERFIELD

Paul R. Hyams

In the competitive world of medieval saint-cults, each shrine strove to outdo its rivals in attracting pilgrims and benefactors. One way to achieve this was to broadcast the saint's miraculous acts as indications of his power. The more unusual the miracle, the more weight it carried. Ordinary cures were ten a penny, but the restoration and regrowth of bodily parts after they had been physically removed -- now that was something really special. It was the proud boast of a Worcester monk of the 1230s that Thomas Becket had been the only saint to manage such a feat, until the local hero, Wulfstan.

The man fated to receive Wulfstan's miraculous largesse was called Thomas of Elderfield. He grew up at the very end of the twelfth century near Tewkesbury in the rich agricultural valley where the rivers Avon and Severn meet just inside Gloucestershire's border with Worcestershire. His father Estmer, a freeholder of insubstantial means, lacked the capital to give his son a decent start in life, and young Thomas was sent off early to make his own way in the world. The pressing need for the patronage of some great man brought Thomas to the household of Geoffrey Fitz Peter, who as chief justiciar of England was second to the king alone. This was a good choice. Thomas had correctly calculated that the size and prominence of Geoffrey's menage offered exceptional chances for preferment. Once there, he worked so diligently that he was able within a few years to take back home enough money to

settle down. He bought himself freehold property at Eldersfield, close to his childhood home at Tirley and a few miles down river from his father's home village of Northway (near Ashchurch). The future looked good, for this was, even then, a most pleasant area in which to live.

Thomas, with his tales of a wider world, must have cut an impressive figure. Before long, he caught the eye of the wife of Robert of Northway, lord of his father's manor, and she began in due course to borrow small sums of money from him, perhaps as an acceptable way for a married woman to make contact with a young man. There evolved in the fullness of time something rather more intimate and passionate than a business relationship. Their affair lasted for about two years, until Thomas confessed all to a priest, under whose direction he broke off the affair and did penance for his sin.

This and most of what follows we have from the pen of a monk of Worcester Cathedral Priory, who included the story among the miracles of his convent's heavenly patron, the long-dead St. Wulfstan. According to our monk, Thomas was, once his adultery was behind him, always in the right. God and St. Wulfstan had proved the point by working such a miracle on him.

By this stage, any intelligent modern reader ought to hear warning bells. The Worcester monk's tale is pretty obviously coloured by his own prejudices, such as his monastic dislike for women who took the social initiative. Yet much of its outline and context can be corroborated from other sources. The law-case at its centre, for example, is recorded on two of the official royal plea rolls.

Clearly, our monk cannot have invented the whole thing, but how much to believe is a difficult question. Is there any way to evaluate the monk's story, without rejecting it by the anachronistic and unfair application of our own contemporary values? Let me first retell the story as it was told in Worcester, and then try to decide what to make of it.

Perhaps the lady really did make most of the running. Her persistent efforts to reopen the affair only induced Thomas to undergo further penance at the hands of other priests. This woman did not surrender her lover without a struggle. After her husband's death, she actually proposed marriage to him, a rather shocking act, when the Church's canon law specifically prohibited such a match between couples who had known each other in adultery. Although the marriage would have given Thomas position and wealth, he would have none of it.

Beware the woman scorned! The Lady of Northway soon conceived a mortal hatred for the man she had once so powerfully desired. She would nurse her grudge until the right moment for revenge. In the meantime, she tired of widowhood and remarried. Our monk scarcely conceals his disgust at this "daughter of Eve", whom he cannot bring himself to name, and the feminine wiles by which she sought to keep her changed feelings a secret.

The affair was by now common knowledge, and few of the local notables can have remained unaware of the torrid undercurrents. George, the lady's new husband, heard the stories and was soon so tortured by his suspicions of lingering lust, that he too came to hate

Thomas. Yet through it all, the social round went on. Everybody saw each other regularly and remained to all appearances on normal good terms.

On Whit Sunday 1217, after passing the holy day together with Thomas in the traditional English fashion -- by drinking at the ale-house, that is -- George finally permitted his frustrations to erupt. By the time the pair started for home, both had left the bounds of sobriety far behind. Suddenly and quite without warning, a heavy blow to the head with George's heavy stick caught Thomas off guard. George threatened further violence. Thomas tried to reason with him. He was prepared to treat the incident as the product of too much ale, but was not going to turn the other cheek indefinitely. George's only answer was to thump him once more, this time on the left shoulder. Thomas was beginning to wonder whether he would get out alive. He took down from his other shoulder the hatchet he happened to be carrying (!) and feinted as if to thrust it at George. Alas, he came closer than he had intended and struck George on the shoulder with the handle, so that the point drew a little blood from his arm when Thomas withdrew it.

At this, George leapt over the fence and rushed off, shouting to everyone he met that Thomas had wounded him, drawing his innocent blood in breach of the king's peace. Our monk says that George consulted his malicious lady wife. Perhaps the couple had planned the whole incident in advance. Certainly, George was adroit now in manipulating the law to his own advantage. He proceeded to lay the legal basis for a formal "appeal of felony" (private prosecution) and thus intensify

his pressure on Thomas. As soon as he reached his own house, he began to blow his horn and raise the "hue and cry" with horn and voice. This meant that everyone from the four neighbouring parishes had to come as quickly as possible, on pain of a fine, in theory to help in the pursuit. But by the twelfth century, the procedure was already archaic. Perhaps it had once been an effective means of catching criminals, but if so, the documents rarely show it. Pursuers were not always keen to apprehend malefactors who were very likely armed and dangerous. Recorded arrests were rare; the chases were probably closer to the Keystone Kops than to a Western!

By this date, the real public function of the hue and cry was rather to net the king fines from defaulters than to trap crooks. For George it also provided a perfect means to publicise his allegations and impress their truth on everyone's mind. He greeted those who came running up with an improved story; he now claimed that Thomas had violently broken in bent on theft. When he had tried to defend his home, he received his "deadly" wound. George had augmented the allegation from simple wounding to the more serious crime of burglary. Equally important, he had broadcast his version of the truth to the whole neighbourhood. First impressions always take some shifting and it would be hard enough to persuade people to go against the word of the lord of Northway.

Thomas had made himself scarce as soon as he realised what was up. He swiftly crossed the river to his house in Eldersfield, lying conveniently within the borders of Worcestershire. Heartened by the

absence of any dangerous fugitive, the crowds poured towards George's house to discharge their duty and find out what all the fuss was about. Among them was Estmer, still unaware of what had happened. On his arrival, the mob leaped to arrest him as accessory to his missing son's crime, bound him and led him off to the sheriff at Gloucester, where he was held until he could find sureties and purchase bail.

George made all he could of his wounds. By magnifying the seriousness of the alleged offence, he had Thomas arrested on several later occasions. In this way, Thomas' resources were consumed simply in keeping himself out of prison. Each time he was arrested, Thomas had to seek the good services of influential courtiers from the great household he had once served, and influence does not come cheap. Meanwhile his enemies could bide their time. Once the preliminary steps for the appeal had been performed in the shire court, the allegations simply entered a suspended animation pending a trial, which, because of George's specification of breach of the King's Peace, "contra pacem", had to be before royal justices.

It took four years, a fairly normal delay at the time, before the next party of justices entered Gloucestershire to try the cases that had meanwhile accumulated. The voluminous plea rolls of this eyre, as the periodic sessions of an afforced county court were called (from the "iter" or journey on circuit), tell us a good deal about its formal proceedings. Very early on in an eyre, the coroners and local hundred jurors had to list for the justices all undecided appeals, to ensure that no breach of the king's peace -- with its attendant royal fine --

was missed. The Gloucester eyre passed through this stage in late June, 1221. Once George's appeal had been duly noted along with all the rest, it could not be quietly abandoned; the court would deal with it one way or the other.

When George achieved his day in court, a couple of weeks later, he tacitly contracted his complaint from burglary to one of simple wounding against the king's peace. He had already created a favourable climate of local opinion for the trial. The risk that his story of housebreaking and drama would not stand up in court was not worth taking. There is a hint of apprehension in his demand to be allowed to sue his appeal as a maimed man, on the ground that the wounds received in Thomas' assault four years before had left him incapable of fighting a duel. A few years earlier, George could have hoped in this way to compel Thomas to undergo the ordeal of the hot iron at no risk to himself. Although the Lateran Council of 1215 had in effect abolished the option of trial by ordeal, confusion about the proper proof for criminal cases still persisted at this, the county's first eyre visitation since abolition. Even so, one wonders whether George can really have hoped (or indeed wished) to avoid the duel. The sheriff and coroner had viewed and measured his wounds at the time of the original assault. George sounds an unlikely cripple. His plea was rejected after a formal court viewing of his injury.

Thomas now denied the truth of the appeal "word for word", and submitted his case to a jury of the neighbourhood. Many of the substantial local men who acted as jurors were no doubt close

acquaintances or friends of the prominent and influential lord and lady of Northway, and knew their story beforehand. They came before the justices now knowing what was expected of them and their guilty verdict was effectively a prima facie judgement for George. The court had little option but to order the pair to fight a duel at a port of call further down the eyre circuit.

On the appointed day, August 5th 1221, a large crowd, women as well as men, streamed out of Worcester onto the open meadow of Kingsmead, close to the Cathedral Priory. Present also were the justices and our two Gloucestershire neighbours each armed ready for the fray. To our monastic guide, the pair made a study in contrasts before the duel. George now radiated confidence in his own athletic ability and duelling skills. Thomas, on the other hand, was weeping bitter tears of guilt for his past misdeeds and busily promising St. Wulfstan that, if the saint would only help him now, he would lead a better life in future. He placed his trust in God and his mother Mary. Just why he should have been the more nervous of the two is unclear; perhaps he was conscious of having already lost the preliminary battle of reputation and influence to George. His premonitions, however, were correct. Once battle was joined, little went right for him. Yet, we are told, the worse his plight became, the fiercer his devotion to St. Wulfstan. It did not help. In the end, he was thrown to the ground and, with his right eye torn almost completely out, forced to admit defeat, to "cry Craven" as men said.

By "the odious rule of the duel", this meant that Thomas had

irrevocably lost. His conqueror at once stripped him of his equipment, on the principle of spoils to the victor, so that Thomas was already virtually naked when he left the field. He was now at the king's mercy; in practice this meant at the justices' discretion. Our monk notes that by strict custom, they could have ordered him to be hanged forthwith. Instead, they "mixed mercy with judgement" and merely sentenced him to be castrated and blinded.

This sounds harsh. Indeed it was worse than you might think. The custom was not just to blind the convict, but to physically tear his eyes out. The task was allotted not to some detached public servant, but to George's own kinsmen. All the same, the justices en route for their lunch doubtless felt that they had acted with compassion and most of the uncommitted bystanders will have agreed.

Everyone at the time accepted that a felon had earned death. He had forfeited his right to life and members. Any fate less than death was an act of mercy, primarily because the reprieve afforded an opportunity of repentance by which to save the soul from the infinitely harsher penalties that lay beyond. The legal treatise "Bracton", written perhaps five years after our case from within the justices' own circle, offers something like an official view. "Punishments were devised for the correction of men", it declares, "so that those whom the fear of God cannot turn from evil may at least be restrained by a temporal penalty." The death penalty headed a hierarchy of human punishments and was not to be imposed for trifling offences. Bracton's dicta, for all their up-to-date Roman-law sheen only restate

commonplaces of legal ethics repeated again and again in previous centuries. In point of fact, though their author could not know it, they represented a conventional view which was soon to become outmoded. By the end of the thirteenth century, mutilation was rare; strangulation at the end of a rope was the rogue's standard end. But this was a change of means rather than of logic or sensibility.

Around 1200, sentences like Thomas' were very likely more common than our records show, and the traditional rationalisations continue to make their appearance. In 1203 at the Shrewsbury eyre, for instance, jurors convicted a woman of harbouring killers. The justices, pronouncing her to have "deserved death", "per dispensationem" sentenced her merely to have her eyes torn out. Similarly, in 1220, the hired champion of a horse thief was sentenced to lose a foot for perjury, by special order of the royal Council and apparently to general applause. The court boasted of its own mercy, "since he had rightfully earned a greater penalty" and one admiring contemporary labelled it a "wonderful judgement".

It was not that people failed to perceive the savagery of mutilation. Bracton had also said that "every corporal punishment, though of the slightest, is greater than any pecuniary one". Mutilation, only slightly preferable to death, was meant to create fear. Its use to this end was generally approved. This unheroic, practical view may seem to accord well with a far-off age when stories of blood feuds were still enjoyed and men unashamedly sought vengeance through the process of law. On reflection, though, the logic need not

be restricted to exotic times and places. Why in our own day do men who openly favour a death penalty nevertheless react to the idea of mutilation with disgust? Perhaps we set a higher premium on sweeping the objects of our repression out of sight than did medieval men.

The details of the treatment meted out to Thomas may confirm the modern reader's preference; they are certainly not for the squeamish. The justices departed, leaving their subordinates (the apparitors) to supervise the consequences of their judicial compassion in full view of a still substantial crowd thirsty for more excitement and loath to leave without it. George's friends now set to work. The first eye came out easily, but they had real trouble with the other one already damaged in the duel. They had to resharpen the blinding tools several times so they could thrust them deep into Thomas' eye-socket. It seems that they would not have been too sorry to penetrate the brain and extinguish life as well as sight. Finally, the job complete, they scraped the last shreds of pupil and nerve off Thomas' face and onto the ground. Then they tore his testicles out of his scrotum and tossed them towards some lascivious youths who, for entertainment, kicked them to and fro among the young women.

The wretched victim could only, as it were, raise his mental eyes to God and pray vehemently to Wulfstan and the Virgin Mary. Court officials probably encouraged the fullest execution of judgement, to protect themselves against any suspicion of neglecting their duties. The presence in the crowd of George's many friends, ready to intervene if what they saw was not to their liking, ensured that no-one lifted a

finger to moderate the savagery. (Mind you, audience participation could work both ways. At the next Surrey eyre in 1225, it was the friends of a convicted thief who attacked the sheriff's officer during the execution.) As our monk superfluously observed, those who implemented the sentence were motivated more by lust for revenge than any love of justice. But vengeance was, after all, the crux of the appeal. I know of no rules to limit the permissible cruelty or to dictate, for example, who would have been responsible had Thomas died of his injuries, as he very well might have done.

When the job was complete, the sated spectators trickled back towards the town, no doubt chattering noisily about the day's entertainment. Thomas was left on his own, hardly more than half alive, wallowing wretchedly in the blood still flowing copiously from his wounds. The town mongrels eyed him hungrily as a potential meal, so some of the stragglers dragged him a little way by his arms and legs. One woman was so touched by his plight that she had him carried in a basket to St. Wulfstan's Hospital just outside the Sudbury Gate back into town, but had to leave him dumped beside the hospital wall, when the master and brethren refused him admittance. He was on his own once more and again might have died, had not one Isabel, a Good Samaritan who specialized in looking after paupers at the hospital, taken him up and begun to look after him. She had to hide him away in a cubby hole next to one of the street doors. In this unpromising location she somehow managed to tend for him and each day to clean off copious deposits of dirt and pus from his eye-sockets.

This was a wretched time for Thomas. He dozed fitfully in his hiding-place, awakening to spells of painful consciousness and prayer. On the ninth day, the vigil of the Assumption (14th August), the sounds of the Virgin's vespers being sung in the Cathedral gave Thomas a first glimmer of hope for recovery. He renewed his prayers for help, until he drifted into a kind of doze hovering between sleep and wakefulness. The blind man now witnessed a vision of unbelievable splendour illuminating the whole house in a brilliant light. Mary, followed by Wulfstan in full pontificals, came slowly over to his bed, blessed him, then faded out of sight. Unwillingly recalled from this ecstasy, Thomas began to shout out the story of his heavenly visitors to the whole house, but fell silent when the pain returned. For a while he lay silent, thinking his glorious vision over. Then his wounds started to itch so violently that he screamed out to Isabel to bathe them and help him resist the overwhelming urge to scratch. Obediently she took off the bandages and prepared some washing water, but Thomas just could not wait. He turned to the wall and pulled up his eyelids with his fingers. To his utter astonishment, he found he could see light coming through the doorway by his bed. This is it, I must be dying, he thought. But when he turned his eyes, he could see with fair clarity first his hands, then things further off. He shouted his news to Isabel, who ran over to him with others from the vicinity.

No-one believed him at first. But tests soon revealed that he was telling the truth. When they looked closely, they discovered that they could see in the eye cavities new pupils, like two tiny plums

(prunulas), which grew over the next days to a reasonable size. In due course, his genitals were also restored and all the other wounds received in the duel cured, "so that nothing about divine grace should remain imperfect", as our monk put it.

For some of his Priory brethren the miracle had about it the ring of the cash till. They were probably still rebuilding the cathedral after the bad fire of 1202. They needed to capitalise on all assets, holy ones not excluded. Few were more conscious of this than Silvester of Evesham, whom the community had shrewdly chosen as abbot after some heavyhanded hints from King John in 1215. (The king belied his modern reputation with a soft spot for Worcester and, especially St. Wulfstan, whom he had long revered.) Silvester had seen royal service in his time and was the king's choice to be an executor of his will. But he took too a convent monk's quiet pleasure in John's deathbed commendation of his soul to St. Wulfstan, with its accompanying fillip of publicity to the saint's cult and church. So it came about that, on the same day as the cathedral's reconsecration in 1218, Wulfstan's bones were moved to an expensive new shrine right beneath the high altar. The local saint was central to the whole reconstruction programme. No effort was spared to spread his fame. At the translation ceremony, bishop Silvester with his own hands broke pieces off from Wulfstan's body as presents for important guests. (A chronicler, reporting Silvester's death shortly after this incident, recalled that many people attributed his unexpected demise to St. Wulfstan's vengeance for the sacrilege and more especially for the

bishop's self-congratulation on it! With news like this, swirling through the west midlands, Wulfstan increasingly appeared a saint whose time had come.)

All this activity helps to explain both why the Worcester monk chose to retell Thomas' story and how Thomas became a devotee. The area near Tewkesbury was within easy range of the publicity campaign, fortunately for both parties. Wulfstan did more than cure Thomas; in effect he granted him a place for life. Once established as one whom God had graced with the experience of a miracle cure, Thomas could provide the Worcester community with a perfect living witness to the saint's powers, in return for board and lodging at the hospital. Wulfstan had restored Thomas physically; his church would see to his other material needs. But first the monks needed convincing proof of authenticity. Empirical evidence offered a certain measure of support. Those who had known Thomas of old noticed, for example, that his new eyes were smaller than his original black ones and looked quite different. They took this as confirmation of supernatural origin. But contemporaries were less impressed by this kind of evidence than by the kind of witness who derived his authority from character and social position, a bishop for preference. This was exactly what they got.

"It happened soon after the event that Master Benedict of Sansetun, bishop of Rochester, arrived in Worcester on pilgrimage as if from the ends of the earth . . ." This bishop was an unusual man. A former master in the Paris schools, whom Stephen Langton cited as authority, he was also a longtime friend and servant of King John's.

Quite recently, for example, he had been head justice on the south-eastern circuit of the same eyre visitation that had tried Thomas' case. He combined personal piety with a royal clerk's desire for precision. He was, for example, the first of the bishops of Rochester to place an exact date on his episcopal documents. To the monks of Worcester his arrival seemed inspired, for Master Benedict had made his journey expressly to seek the "true Solomon", that is Wulfstan. In other words, the saint himself had secured the perfect witness.

Soon after the bishop's arrival in town, excited hosts told him the great story of the day. He received it coolly but rode across to the Hospital anyway, so that, like doubting Thomas, he could see for himself. The blindness cure was relatively straightforward, for the signs were clearly visible to everyone. The castration was another matter. This the bishop had to investigate for himself. First, however, he proceeded by proxy. He ordered his chaplain to stroke Thomas' genitals and check whether they were really restored. The bashful monk obeyed with obvious reluctance. Kneeling down, he reached out his hand to exclaim that all was in order, whereupon the bishop burst into tears of joy. He was now eager to touch for himself, not -- as he swiftly explained -- that he had ever lacked faith, but simply to add his personal witness to so great a miracle. He reached out, was immediately convinced, remounted and went his way rejoicing.

Thomas took the habit and probably lived out his days at the hospital as a minor celebrity. Dearly though he had paid for this good fortune, we cannot leave him to enjoy it without at least asking what

we think actually happened to him. The very circumstantial Worcester story can be confirmed in outline from other sources. The case, including the duel and ensuing mutilation really did take place; the reports in the royal plea rolls prove that. Two of the sureties who guaranteed the parties' appearance at the duel turn up elsewhere in the proceedings of the Gloucester eyre. References to the story in local monastic annals seem to show that its essentials were well known in the area. It had even caught the imagination of a versifier.

Sexu privatus fit vir;
videt exoculatus.

(He who was deprived of his sex is become virile. He who lost his eyes sees.)

The place and timing of the alleged incidents are all plausible. If I have so far failed to trace the main characters in respectable legal or fiscal sources, that is, alas, not unusual. Still, we have to consider the possibility of a pious literary fraud. Our author refers at the start of his story to the similar cure perpetrated by the recently martyred Thomas Becket between 1170 and 1174 on one Ailward from Weston in Bedfordshire. Ailward's story appears in two of the vitae, those by William of Canterbury and Benedict of Peterborough, one of which clearly served our Worcester monk as model. Although the circumstances of Ailward's case are quite different, the two stories contain striking parallels. Our author learnt from his model what features to expect and may well have imported detail to make his story more plausible. For example, Ailward's new eyes, like Thomas', are

said to have been smaller and a different colour from his original ones. In his case too, the conversion of a bishop to the status of an enthusiastic witness set its seal to the case. Our author may have misread his source on the length of time between mutilation and cure -- for Ailward nine days of prayer ending with a night vision of the saint and the promise of a morning cure on the tenth day; for Thomas a day less -- or he may have followed the facts of Thomas' case and the calendar. Finally, though both accusers put themselves in the wrong by magnifying their complaints with additional false allegations, neither author suggests that God was the more ready to sympathise with the victims because of their unfair treatment. Our Worcester author may have missed a trick here by not thinking for himself.

These parallels are close enough to raise doubts about the whole story. If our monk invented the alleged miracle, all his other detail, however circumstantial, becomes suspect too. Hagiographers are known to treat the factual setting for their saints' miraculous deeds as of secondary importance, just as a theatre director selects and places his scenery to display the action for maximum impact. They frequently describe events as they ought to have happened to the detriment of strict truth. That could be the case here. Yet similar situations draw forth similar exposition. It is equally possible to use a model, without fraudulent purpose, to facilitate the organization of one's material. Moreover, our monk writing a decade after the events may well have met Thomas, though, if so, we should expect some mention of the fact. What we need to know is how far to trust the before and

after parts of his story, where he is out on his own.

Scepticism would not have surprised our author. The modern image of the thirteenth century as an age of faith can never have been more than a half-truth. Scoffers were not uncommon. There was also always a need in the shrine business to establish the case for your local miracle-worker against denigration by partisans of rival cults. Even at the time, some people dismissed Thomas' miracle as the pseudo-cure of a man who had never really been mutilated. Our monk confesses that even he had had his doubts, until eye-witnesses whom he knew and trusted swore to him that the sentence had been executed just as described and so set his mind at rest. His own protestations that he has neither added nor changed a thing testify to contemporary scepticism.

These are the routine rationalizations of hagiographers. To modern readers, they leave unanswered the main question of what actually happened. One attractive possibility is that our monk was telling an essentially accurate tale, but misinterpreting as miraculous events that had in fact a natural explanation. Could a man recover from vicious mutilation in the way described, by some process of faith-healing for example? The short answer to this is: No.

We may once again leave aside the castration. The tests of resumed virility were very insubstantial. There is, unsurprisingly, no record of Thomas ever fathering a child. He just felt "normal" to an embarrassed monk with averted face! Recovery of vision is a much more clear-cut matter. Medical specialists are categorical that damage to

the optic nerve is irreversible. Even apparently minor damage, particularly contact with copper, can begin a process of inevitable degeneration of sight. (The existence of copper-tipped blinding instruments from the early-modern period suggests that copper's toxicity was recognised early.) Enucleation without damage to the optic nerve is extremely unlikely, and regeneration after treatment like Thomas suffered, unheard-of.

There remain, however, two conceivable possibilities. The first concerns superficial appearances. Behind the eye-ball lies a mass of tissue which resembles chicken fat and serves as a shock-absorber. These vesicles may continue to be produced after the trauma of blinding, and can then expand beyond their normal volume until they almost fill the space of the eye socket. Unwary observers from a distance could mistake this yellowy-white mass as the white of an eye, though it carries absolutely no visual function. A mistake of this kind could have convinced doubters in the shadowy world of the medieval miracle that Thomas (and Ailward) had new eyes looking strangely different from normal ones. The process of vesicle expansion takes time, however, and could hardly have advanced far enough within ten days to fool anyone.

The second possibility is even more remote. There are at any time a small number of known people in the world capable of "seeing" without eyes. That is, they possess a limited ability to perceive close objects and sharp colour contrasts. Scanning objects with their fingers and holding texts close to their faces seem to heighten the

resolution. Just how the perception works is at present unknown, for lack of proper scientific study, but experts accept that this "seeing without eyes" does exist. One must reckon with the remote possibility that Thomas, and Ailward fifty years before, were among the select band of people with this very special capability. And if they were so favoured, one is at liberty to speculate on what aid, if any, their saintly associations provided in developing these very special skills.

Conceivably, then, Thomas did possess the ability to perceive in a limited way and the appearance of sightedness. The combination would be enough to silence contemporary sceptics. Even so, the process can hardly have been completed in the time allowed by our account. Here, perhaps, our author, writing at least ten years later, allowed himself some literary licence to lend the events an appropriate chronological framework. The time lapse is too short to facilitate total invention, but quite long enough to allow a reordering of facts. This suggests one further possibility. Perhaps the Thomas paraded around Wulfstan's shrine was not in fact the mutilated Thomas but a substitute. A partial and temporary recovery of perception would have been hailed as a miracle. If death or total incapacity followed soon after, the monks would have been severely tempted to substitute a new witness for what seemed to them a genuine miracle and a signal honour to their community. The second Thomas would be, as scholars say of a concocted charter, a forgery based on authentic material. One can only guess at the saint's own feelings!

LEGAL NOTE

The major benefit for legal historians of Thomas' story, as that of Ailward, lies in its documentation of the extra-curial circumstances behind some appeals of felony. Although the present story requires no justification beyond its intrinsic power and interest, it is important to confirm that the circumstances depicted could strike contemporaries as plausible appeal contexts, within the range of the cases they knew from their personal experience. Without this the historical implications are unuseable.

If Thomas' tale is considered to have passed this test, it documents a stronger and more prominent revenge element in appeals than some recent accounts of the subject lead one to expect. George was not obviously interested in compensation, whether in money or kind. He was out for vengeance. Hence, civil appeals and trespass suits were not serious options for him. The prospect of personally stripping one's defeated opponent of his equipment and supervising or participating in his punishment, as revealed by our two stories, can only have enhanced the attractions of vengeance appeals. It promised great satisfaction, yet it was all legal!

Recent accounts of the appeal have, in contrast, stressed the strategy of achieving maximum compensation through an out-of-court settlement, merely ratified or licensed, one might almost say, by amercement for non-prosecution in the royal court. The knowledge that, once the appeal was "on the books", its inevitable appearance before the justices could well lead first to a duel and then severe corporal

punishment, certainly increased the pressure on appellees to come to terms. Formulating appeals in the strongest possible terms with an eye on the maximum penalty thus suited compensation-seekers quite as well as those primarily intent on revenge. The two goals were complementary within the system of appeals.

Common-law private prosecutions and the blood feuds of the distant past were by no means, then, mutually exclusive options, which suggests that one litigation procedure well documented for the thirteenth century may also have been popular earlier: exaggerating the cause of action. The aggrieved frequently had at their disposal a number of different ways to formulate their complaint. In the thirteenth century and later, litigants possessed various options: they could choose to seek redress through appeals or trespass, in the king's court or before some lower tribunal like the shire. (A similar process occurred when men were deciding whether to sue in court christian. One could easily reformulate an advowson case for ecclesiastical consumption as a suit about patronage or a pension due from a benefice. The resulting second-order jurisdictional disputes were central to many Prohibition actions.) In these circumstances, it was always tempting to embroider the allegation, with the jurisdictional "tickets" for entry into royal courts, in order to threaten a higher penalty. The appellors in both our stories overstated their cases in order to raise the threat of mutilation. Many other twelfth-century litigants probably acted similarly.

How did they know to do this? In the twelfth century, no

professional or full-time secular lawyers existed to inform ordinary people of their rights and options. Of course, some men were more knowledgeable than others, royal or seignorial bailiffs and court clerks for example. Just such a man was the apparitor Fulk, on whose advice the other Fulk fraudulently raised the level of his accusation against Ailward in the Becket miracle story. This group includes the kind of men who, around the turn of the twelfth and thirteenth centuries, were becoming such frequent attorneys that one can regard them as possessing the beginnings of legal "practices". The demand for knowledgeable advice on how to address the royal legal system to which this attests was not confined only to those able to pay for it. Others called upon their peers and acquaintances possessed of better experience of the courts to share it with them. While this certainly was no guarantee of accurate or well-judged advice, most litigants had a considerable folk knowledge of the law. Everyone from the Angevin period, if not before, had some relevant experience. Mandatory attendance at the hue-and-cry, coroner's inquests and local courts including the hundred and service on juries of presentment and the like provided willy-nilly an elementary legal education. We have to assume among ordinary people a considerable degree of legal knowledge on particular topics.

Miracle stories like the present one well illustrate lay sophistication in the law. George of Northway and his lady wife patently knew enough to calculate their strategy from an early stage. The putative folk nature of this expertise may even explain some of the

seeming contradictions in George's strategic decisions over the whole four-year course of the case. All the same, an awareness of the basics of crime and trespass independent of legal book-learning was perhaps more widespread than we have tended to allow.

Mutilation, the means for George's vengeance on Thomas, is another neglected subject. Indeed, a fresh study of twelfth- and thirteenth-century penal practice in general is long overdue. Such a reappraisal should consider the possibility that mutilation occurred frequently in the royal courts and elsewhere. This would explain the plethora of references to judgements of "life and members" in charter grants of franchises and the prognostications of legal writers.

Historians of the late thirteenth century can describe in some detail a system of criminal punishment that seems significantly different from that prevalent earlier. Hanging became the normal punishment for serious crime, and mutilation extremely rare. On the other hand, the percentage of criminal accusations that reached conviction and sentence was low, because of flight and jury acquittal. We seem to see here a change of substantial proportions, from one hierarchy of corporal and pecuniary penalties to a quite different range that now included, for example, incarceration as a regular penalty.

If this is a genuine contrast, it poses, among broader problems, a specific question about our current case: plea roll evidence does not support the Worcester monk's assertion that the natural sentence on Thomas' conviction was "by the custom of the realm" death. A marginal

reference to the Assize of Clarendon on one of our two rolls suggests that the justices ordered the mutilation by analogy with the penalties provided for those convicted under procedures of public prosecution. Yet the indictment system as originally established in 1166-76 envisaged only the loss of hand or foot, not the blinding and castration meted out on this occasion. If death was a normal punishment in 1221 for the kind of felony Thomas was said to have committed, what, exactly, impelled the justices to be merciful? The history of medieval criminal law has concentrated largely on proof and procedure, but further research is needed to delineate the role of punishment in the system.

A note on sources

The basic story comes from R.R. Darlington (ed.), The Vita Wulfstani of William of Malmesbury (Camden Society xl, 1928), pp. 168-75, controlled by F.W. Maitland (ed.), Pleas of the Crown for the County of Gloucester ... 1221 (1884), no. 87, pp. 21-2.

The two versions of Ailward of Weston's story are to be found in Materials for the History of Thomas Becket, ed. J.C. Robertson (vols. i-ii, Rolls Series 1875-6), i. 155-8; ii. 173-82.

There is no recent treatment of English penal history in general or medieval mutilation. C. W. Hollister, "Royal acts of mutilation: the case against Henry I", Albion 10 (1978), pp. 330-40 contains an interesting brief survey of material and views.

Bracton on the Laws and Customs of England ed. G.E. Woodbine and translated with revisions by S.E. Thorne (4 vols. Cambridge, Mass. and London, 1968-77) was originally composed within a few years of Thomas' trial by a member of the court circle that staffed eyre circuits. I used a number of sections in vol. ii on punishment and appeals of wounding.

R. Finucane, Miracles and Pilgrims (1977), treats the shrine business in general; pp. 100-1 contain a brief treatment of our story.

This article was written while the author was a Sherman Fairchild Distinguished Scholar at the California Institute of Technology. One of this appointment's ancillary benefits was a brief but pellucid tutorial on the materials for the section on vision by Professor Derek H. Fender, Professor of Biology and Applied Science. I am particularly grateful to him, to John Benton, Nicholas Dirks, Will Jones, and Eleanor Searle, temporary colleagues and lasting friends from the Division of Humanities and Social Sciences, who all read and commented on a preliminary version of the story, and to Caltech an academic haven for us all. Also to my wife Elaine for everything, including at least one burnt meal.





